IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2553 OF 2006

M/s. Mehta Gem Tools Private Limited ..Petitioner.

Vs.

Mrs. Aruna Arvind Parkar & Ors. ..Respondents.

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Mr. J.P. Cama, Senior Advocate for the Petitioner.
Mr. P.M. Patel for the Respondents.

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CORAM: DR. D.Y. CHANDRACHUD, J.

5th October, 2006.

P.C. :

1. This Petition is directed against a judgment and order dated 5th January, 2006 of the Industrial Court in a complaint under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaint before the Industrial Tribunal was instituted in February 1999 by seven workmen all of whom are Respondents to these proceedings. The Petitioner herein who was the employer was engaged in the business of the manufacture of drilling bits. The complainant workmen were engaged as diamond setters in the Drilling Department. Each of the complainant workmen had long

years of service, the initial dates of appointment being between 1st August, 1966 and 3rd January, 1981. The grievance of the workmen was that though the salary was payable on or before the fifth day of each succeeding month, the payment of salaries had become irregular, with the result that the salaries for the month of December 1998 had been disbursed only on 19th February, 1999. The salaries for the month of January 1999 were not paid until the date of the institution of the complaint. The complainant workmen stated that the entire action of the employer was motivated by the desire to close down the undertaking and to get rid of permanent employees. Besides seeking a declaration of an unfair labour practice, the complainant workmen sought the payment of salary on the fifth day of each succeeding month.

2. The written statement before the Industrial Court was filed on behalf of the employer on 29th April, 1999. The date of the filing of the written statement assumes importance because as on that date the employer did not set up any plea to the effect that there was a closure of the establishment in fact. On the contrary, the employer admitted that there was a delay in the payment of salaries and that even the salary for the month of January 1999

had not been paid so far. The employer pleaded that at the highest the case of the complainant workmen was that they have attended the factory for the entire period for which the salaries were delayed. In paragraph 5 of the written statement the pleadings of the employer were thus :

> "With reference to para 3(c) of the complaint, the Company does not deny that the payment in respect of the salary of not only these complainants, but also of the other workmen is delayed every month not only from December 1998 but even earlier. At present the company has cleared the salary of the complainants and the other workmen upto the month of February 1999 and there is delay for the payment of salary for the month of March 1999, which is so far not paid. It may not be possible for the Company to pay the salary for the month of April 1999 also on time. The Company submits that it cannot deny the allegations regarding the delay in payment of the salaries of the complainants and the other workmen of the Diamond Drilling Bits Department. The Company, however, denies the allegations that the complainants have worked in the Company for any of these months. These complainants can at the most say that they have attended the factory during the entire period for which their salaries have been delayed by the Company. The Company also admits that they are duty bound to pay their salary not on 5th of every subsequent month, but upto 7th of such a month. The Company cannot say that it has not delayed the payment of these workmen. The Company respectfully submits that the company was only manufacturing Drilling Bits in the Company for which the complainants were engaged as Diamond Setters. There are about 19 other workmen doing the work of drilling bits."

In paragraph 6 of the written statement, the employer set up a

specific plea that though it wanted to close down the Diamond Drilling Department, it could not do so as the company had no funds to offer the workmen compensation as a settlement for the closure of the department. Similarly, it was also pleaded that the company would have no alternative, if any steps were taken by the workmen, "then to close the Diamond Drilling Bits Department without making any payment of their terminal dues". Therefore, on the basis of the written statement as it was originally filed the irresistible inference is that the case of the employer himself was that there was no closure of the establishment for the reason that the company did not have resources to pay the terminal dues and that the delay in the payment of wages was due purportedly to financial difficulties.

3. Evidence was adduced before the Industrial Court on behalf of the complainant workmen by two workmen who stepped into the witness box. The employer deposed in support of its case. The Industrial Tribunal by its judgment and order dated 5th January, 2006 allowed the complaint and directed the employer to pay the wages of the complainant workmen between 1st April, 1999 till 31st March, 2000. The Court noted that the workmen had

confined the claim only upto March 2000 since the establishment was closed thereafter. Before the Industrial Court reliance was sought to be placed on a settlement that was arrived at between the employer and the union under Section 2-P of the Industrial Disputes Act, 1947 on 17th April, 2000. The Industrial Court held that ex facie the settlement showed that it applied only to 19 workmen who were signatories to the settlement with the union and the settlement on its own terms did not apply to the complainant workmen. In so far as the complainant workmen were concerned, the Industrial Court held that their services were not terminated by the employer and consequently they would be entitled to the payment of wages until 31st March, 2000.

4. In assailing the order of the Industrial Court it has been submitted on behalf of the employer that by the settlement dated 17th April, 2000 it was agreed that a notional date for the closure of the establishment was arrived at viz. as 1st April, 1999. It was submitted that though the terms of the settlement were to govern 19 workmen and the complainant workmen to this dispute were not signatories thereto, the union of which the complainants were members had agreed to a closure with effect from 1st April, 1999.

It was urged that this would bind the complainant workmen as well and that in pursuance of an interlocutory order passed by a Division Bench of this Court on 31st July, 2000 the management was directed to pay the terminal dues to the complainant workmen in the same manner as those workmen to whom the settlement applied.

5. In considering the tenability of the submissions that have been urged before the Court, it would at the outset be necessary to recapitulate the case of the management itself in its defence to the complaint of unfair labour practices. The relevant part of the written statement of the management has been adverted to in the earlier part of this judgment. When the management filed its written statement on 29th April, 1999 clearly it was not even the case of the management itself that there was either a closure of the establishment or for that matter that there was a strike on the part of the workmen. On the contrary, the management admitted that there was a delay in the payment of salaries and claimed that this was due to its financial difficulties. In fact the clear case of the management was that while it intended to close down the establishment, it was unable to do so since the company had no

funds to pay the terminal dues of the workmen. A perusal of the relevant part of the written statement as it was originally filed would therefore clearly demonstrate that at the highest the case of the company was that it intended to close down the establishment at some future point of time. That point of time manifestly, was still to arrive.

6. The written statement was amended after the employer entered into a settlement on 17th April, 2000. It is an admitted position that this settlement that was entered into with the union and with 19 workmen was not a settlement in the course of conciliation. Consequently in terms of Section 18(1) the settlement which was arrived at otherwise in the course of conciliation was binding on the parties to the agreement. The recital of the parties to the settlement in the Memorandum of Settlement that has been placed on the record shows that those workmen whose names were set out in Annexure A thereto were referred to in the settlement as 'the workmen' and it was those workmen who would be governed by the settlement. The Memorandum of Settlement dated 17th April, 2000 provided for the resignations of 19 workmen who had accepted the terms of the

settlement and quantified the dues that would be paid to those workmen. Every one of the four operative clauses of the settlement evidences a clear intention that the settlement would resolve the dispute in relation to 19 workmen who were parties thereto. Admittedly none of the seven complainant workmen were signatories to the settlement. The settlement, it must be noted, did take notice of the necessity of bringing an end to the relationship of employer and employee by recording that the 19 workmen who had agreed thereto would resign from service. The admitted position is that in so far as the seven complainant workmen governed by the present proceedings are concerned, there was no termination of service. Therefore, even if, for the purposes of argument, the case of the employer to the effect that there cannot be two dates of closure is accepted, the fact remains that in so far as the seven complainant workmen are concerned, there was no termination of their services at any rate prior to 31st March, 2000. If the employer intended to bring an end to the employer and employee relationship qua these seven workmen, it was open to the employer to do so by paying to them the closure compensation and other terminal dues. This was admittedly not done even when the settlement was arrived at on 17th April, 2000 with the

other workmen. Two of the workmen stepped into the witness box in support of their respective cases. Archana U. Mhatre who deposed in support of the case stated that it was on 20th April, 2000 that the management locked the gate and did not allow the workmen to enter, upon which a complaint was lodged at Jogeshwari Police Station. The witness deposed that her work was being supervised by Mr. Gurudas Mitra who had left the company on 17th April, 2000. The witness stated that after March 1999 the workmen used to get some work on some occasions. The second witness who deposed in support of the complaint Mrs. Aruna Arvind Patil similarly stated in the course of her cross examination that the workmen were intermittently provided work by the employer. In the course of his examination-in-chief the witness for the employer sought to establish a case to the effect that it was the employees who had stopped work from 31st March, 1999. Fairly counsel appearing for the employer has been unable to point out any statement of fact to the effect in the written statement raising such a plea.

7. In these circumstances, the Industrial Court was, in my view, justified in taking the view that there was no valid cessation of

the relationship of employer and employee in so far as the seven complainant workmen were concerned. During the pendency of the complaint an interim order was passed by the Industrial Court, against which a Petition filed in this Court was dismissed by the Learned Single Judge on 12th June, 2000. In appeal, by an order dated 31st July, 2000 the Division Bench, while staying the operation of the interim order, directed the employer to pay the seven complainant workmen the terminal dues to which they were otherwise entitled, in terms of the settlement dated 17th April, 2000. The order passed by the Division Bench for the payment of the terminal dues does not affect the entitlement of the workmen to the payment of their earned wages upto 31st March, 2000. Counsel appearing for the employer has fairly stated before the Court that the terminal dues which have been paid consist of retrenchment compensation and gratuity. The payment of the terminal dues would not affect the entitlement of the workmen to the payment of their earned wages until 31st March, 2000, in terms of the order of the Industrial Court, since the relationship of employment continued to remain in force until that date. The mere closure of the establishment would not ipso facto put an end to the relationship of employment of each of the seven workmen. The

employer was conscious of this fact when a specific clause was inserted into the settlement dated 17th April, 2000 to the effect that the nineteen workmen who were to get the benefit of that settlement would have to tender their resignations.

In these circumstances, the order of the Industrial Court does not warrant interference under Article 226. The Petition is dismissed.